HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 113 of 2006

APPLICANT Raymond Augustin Deen

Vs.

RESPONDENT The State of Chhattisgarh

Order post for 7-8-2007

Sd/-
DHIRENDRA MISHRA
Judge

(32)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Revision No. 113 of 2006

APPLICANT Raymond Augustin Deen, son of E.N. Deen, aged about 40 years, resident of Sector-8 State Bank Colony, Qr. No. C-4/3, Bhilai, Tehsil and District Durg (C.G.)

Vs.

RESPONDENT The State of Chhattisgarh, through District Magistrate, District Durg (C.G.)

SB: Hon'ble Shri Justice Dhirendra Mishra, J.

Shri Anurag Jha, Counsel for the applicant.
Shri Pradeep Singh, Panel Lawyer for the State.

O R D E R

This criminal revision is directed against the judgment of conviction and order of sentence dated 17-1-2006 passed in Criminal Appeal No. 233/2005 arising out of the judgment dated 30th June, 2005 passed by the Additional Chief Judicial Magistrate, Durg in Criminal Case No. 116/2004.

2. Applicant and other accused persons Mamta Deen and Pradeep Kumar Semual were prosecuted for offences under Section 420, 467, 468 and 471 of I.P.C. and learned Additional Chief Judicial Magistrate, Durg convicted the applicant and his wife Mamta Deen under Section 420, 467, 478 and 471 of I.P.C. and sentenced the applicant to undergo R.I. for 5 years and fine of Rs. 25,000/- for each offence, the accused Mamta Deen to undergo R.I. for three years and fine of Rs. 10,000/- for each offence. Co-accused Pradeep was acquitted of all the charges. The appeal preferred by the applicant and Mamta Deen was decided by the impugned judgment whereby learned Appellate Court allowed the appeal preferred by Mamta Deen and acquitted her of all the charges, however the appeal preferred by the applicant was partly allowed. His conviction under Section 467, 468 and 471 of I.P.C. was set aside, however his conviction and sentence under Section 420 has been upheld.

3. Learned counsel for the applicant submits that written complaint was lodged by P.W. 3 Kalpana Jonathan, however

this witness has not made any allegation against the present applicant and has stated that money was paid by her to the absconding accused Sandeep Guharai. Similarly other witnesses Anil Topno (P.W. 1), Abha Minj (P.W. 4), Vinita Samuel (P.W. 5), Elizabeth Samuel (P.W. 6), Rosemary Samuel (P.W. 7), Rajeev Abhisek (P.W. 9) and Smt. Chhaya Naidu (P.W. 10) have not made any allegation against the applicant and his wife however he has been convicted only on the basis of statement of witnesses Smt. Manjujon (P.W. 8), Smt. Chhaya Naidu (P.W. 10), Sunita Sudha Kanta (P.W. 12), Shailja (P.W. 14), Smt. Yasmin (P.W. 15) and Smt. Malti Jadhav (P.W. 21) though these witnesses never made any complaint before the police that they were cheated by the applicant and the accused persons. This was also argued that learned Appellate Court has acquitted accused Mamta Deen of charges however conviction of the applicant has been confirmed though the allegation made by the prosecution witnesses against both the accused persons are similar and in these circumstances the applicant ought to have been extended benefit of doubt.

4. On the other hand, learned counsel for the State referring to paragraph 11 to 15 of the impugned judgment has contended that numerous victims of cheating have deposed before the Court that they paid money to the applicant ranging from Rs. 50000/- to 1,50,000/- in the hope of getting employment. They were also asked to reach Bombay. Amounts were deposited by them in the bank account of Sandeep Guharai and Raymond. They were also made to pay additional amount in the name of pass port, however no employment was given to the victims and in these circumstances, report was lodged and both the Courts below acting upon the statements of above witnesses have convicted and sentenced the applicant and which is concurrent finding of fact and it does not call for interference.

5. I have heard learned counsel for the parties.

6. P.W. 8 Smt. Manjujon has categorically stated that Raymond along with Mamta Deen came to her and informed

her that if they are prepared to deposit Rs. 50,000/- they may obtain employment in Australia whereupon she paid Rs. 25000/- to Raymond in April 2003 thereafter she paid Rs. 1 lakh in three installments to the applicant and his wife. On being asked by the applicant and his wife, they reached Chennai and where it was promised that they shall be going to Australia via Singapore, however, no employment was given to her as promised nor the money was returned. Similar is the statement of Chhaya Naidu (P.W. 10) who claimed that she paid Rs. 50000/- to the applicant and his wife thereafter she was asked to go to Bombay in the month of June by the applicant and Mamta Deen. She stayed in a lodge, number of other persons were also there at Bombay from Bhilai. She met Raymond in the company of Sandeep Guharai however she returned Bhilai. Similar is the statement of Naveen Chandra (P.W. 11) who has categorically alleged that Raymond promised for employment in Australia and asked for a sum of Rs. 1,25,000/-. He had also assured that he shall accompany him upto Australia and accordingly a sum of Rs. 1,25,000/- was paid by him to applicant. He had gone to Bombay with other 12-15 persons. Other witnesses Sunila Sudhakanta (P.W. 12), S.K.D. Samuel (P.W. 13), Shailja (P.W.14), Smt. Yashmin (P.W.15), Mohd. Isharak Nijami (P.W. 16), Manjula Singh (P.W. 17), Javed Ahmed (P.W. 18), P. Sahina Suresh (P.W. 19), J. Amitrao (P.W.20) and Smt. Malti Jadhav (P.W. 21) were also examined and Courts below after appreciating the evidence of these witnesses and on the basis of other evidence available on record that the cheated persons were taken to Bombay and Chennai by the applicant on the pretext that they were being taken to Australia for employment which was never provided to them by the applicant convicted the applicant.

7. It is settled law that where the trial Court and the appellate Court on appreciation of evidence available on record reached to the concurrent finding of fact that the charge against the accused was proved beyond reasonable doubt, ordinarily it

is not open for the High Court to interfere with the concurrent finding of the Courts below specially on re-appreciation of evidence in its revisional jurisdiction. In the instant case, the applicant was not able to point out that appreciation of evidence by both the Courts below was perverse and the only ground urged was that the other co-accused Mamta Deen has been acquitted though similar evidence was available against her. Both the Courts below considering the role played by the applicant that he was instrumental in collecting the money in the name of providing employment and subsequently guided the victims to reach Bombay and Madras.

8. In the result, the petition is devoid of substance and the same deserves to be dismissed and it is dismissed.

Sd/-
DHIRENDRA MISHRA
Judge